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12 AYALA, ERIC SCOTT POWELL, EMILIO VAZQUEZ, PATRICK GATSON,  
13 ANTHONY BRYANT, JAMAR EVANS, and JAMES WILLIAMS  
14 (Additional attorneys for the Plaintiffs on following page)

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 THE ESTATE OF DONALD  
14 HARRINGTON, EDWIN AYALA,  
15 ERIC SCOTT POWELL, EMILIO  
16 VAZQUEZ, PATRICK GATSON,  
17 ANTHONY BRYANT, JAMAR  
18 EVANS, and JAMES WILLIAMS, on  
19 behalf of themselves, all others similarly  
20 situated, and the general public, and as  
21 an “aggrieved employee” on behalf of  
22 other “aggrieved employees” under the  
23 Labor Code Private Attorneys General  
24 Act of 2004,

22 *Plaintiffs,*

23 vs.

24 MARTEN TRANSPORT, LTD., a  
25 Delaware corporation; and DOES 1-50,  
26 inclusive,

27 *Defendants.*  
28

Case No.: 15-CV-01419-MWF-ASx

**DECLARATION OF DAVID  
SPIVAK IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR  
CLASS CERTIFICATION**

Hearing Date: August 27, 2018

Hearing Time: 10:00 a.m.

Judge: Hon. Michael W. Fitzgerald  
Courtroom 5A

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**DECLARATION OF DAVID SPIVAK IN SUPPORT OF PLAINTIFFS'**  
**MOTION FOR CLASS CERTIFICATION**

I, DAVID G. SPIVAK, declare and state as follows:

1. I am an attorney at law duly licensed to practice before all the Courts of the State of California. I am a principal in The Spivak Law Firm. I am the attorney of record for Plaintiffs the Estate of Donald Harrington, Edwin Ayala, Eric Scott Powell, Emilio Vazquez, Patrick Gatson, Anthony Bryant, Jamar Evans, and James Williams ("Plaintiffs") and the putative class in this action and have been involved in this particular litigation since its inception.

2. The following facts are stated from my personal knowledge, except those facts stated on information and belief, which I believe to be true and correct, and if called as a witness, I could and would so competently testify thereto under oath.

3. A true and correct copy of the email of Angela Rafoth to me dated August 30, 2016 at 9:50 p.m. with 48 pages of various documents Defendant bates labeled as DEF0007681 through DEF0007728 and produced in response to Plaintiff Donald Harrington's Request for Production of Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) are attached collectively to this declaration as **Exhibit 1** in redacted form. Per the agreement of the parties, this document has been redacted of all names, addresses, account information, and employee identification numbers to protect the privacy of the employee's identifying and contact information. The following subparagraphs pertain to documents in Exhibit 1:

a. Exhibit 1 includes Defendant's model offer letters for over-the-road, regional driver, intermodal driver, and dedicated driver, bates labeled DEF0007681 through DEF0007684. Timothy Norlin deposition ("TN depo."), 23:17-24:12, 33:17-34:1, 36:17-37:2. These show that Defendant pays each category of driver a mileage-based rate, with the exception of the intermodal

1 driver who it pays at a day rate and the dedicated driver who it pays at a blended  
2 day and mileage rate.

3 b. Exhibit 1 also includes Marten Transport Training and  
4 Development Manager's email message of February 19, 2016 to several other  
5 employees of Defendant with materials from a Mindflash training course on  
6 Defendant's report of "changes to allow us to be compliant with CA wage laws."  
7 Defendant bates labeled these documents DEF0007685 through DEF0007696.

8 c. Defendant states at DEF0007687, "Mandatory breaks are  
9 based on hours worked **in California**, hours worked before entering CA and after  
10 leaving CA do not count toward hours worked." Defendant testified that it is able  
11 to track when its drivers (by their assigned trucks) are within the State of  
12 California using "Qualcomm position reporting." Douglas Petit deposition ("DP  
13 depo."), 86:20-87:6, 105:8-107:8. As Plaintiffs state in the memorandum of points  
14 and authorities in support of his motion for class certification, this lawsuit will  
15 decide for all class members whether hours worked by California-based drivers  
16 before entering the State and after leaving it count towards hours worked that  
17 qualify for breaks.

18 d. Defendant states at DEF0007688, "a driver who works more  
19 than 10 hours in a workday but who does not work more than 14 hours in a  
20 workday is entitled to 10-minute rest breaks." Defendant tacitly recognizes here  
21 that its drivers will at times work in excess of ten hours per day.

22 e. Defendant states at DEF0007691 that "non-productive time"  
23 "will be based on the drivers on duty not driving time from [their] prior week's  
24 [electronic driver] logs." Defendant tacitly recognizes here that its drivers track  
25 their time spent "on duty not driving."

26 f. Defendant states at DEF0007692 that its pay to drivers for rest  
27 breaks "is not added to their mileage pay, detention pay, etc., but is already  
28 included in their total pay for that period." This shows that Defendant does not

1 separately pay its drivers for rest breaks. Defendant states at DEF0007696 that it  
2 implemented its new California pay plan on April 27, 2016, four months after  
3 Labor Code § 226.2 (with its nonproductive work and rest break pay  
4 requirements) went into effect.

5 g. Defendant's background check disclosure forms do not  
6 constitute "stand alone" disclosures. *See* Exhibit 1, DEF0007714-DEF0007727.  
7 These documents include liability releases that state, "I hereby release all such  
8 persons [Defendant and past and current employers] from any liability and  
9 damages." *Id.*

10 h. In DEF0007728, Defendant reported to its truck drivers that its  
11 new 2016 California compensation plan resulted in higher wages to drivers  
12 ("...drivers are actually coming out a bit better than under our regular pay plan.").  
13 Defendant acknowledges that, under the prior pay plan, it did not pay drivers  
14 when they spent "one hour, on duty, not driving" after they arrive at a customer  
15 ("\$0"). *Id.* Defendant also indicates in the document that it did not separately  
16 compensate its drivers for pre- and post-trip inspections or fueling under the prior  
17 pay plan. *Id.*

18 4. A true and correct copy of Plaintiff Donald Harrington's Request for  
19 Production of Documents and Tangible things to Defendant Marten Transport,  
20 LTD., Set No. 1 is attached to this declaration as **Exhibit 2**. In response to these  
21 requests, Defendant produced all the materials, manuals, handbooks and policies  
22 in effect during the relevant time period which are attached to this declaration.  
23 Defendant also produced Plaintiff Donald Harrington's applications, driver  
24 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
25 satellite messages, agreements, background checks, and acknowledgments of  
26 receipt of employment policies and procedures which are attached to this  
27 declaration.

28 5. A true and correct copy of the California Industrial Welfare

Commission's Wage Order 9-2001 applicable to the transportation industry and effective July 1, 2002 is attached to this declaration as **Exhibit 3**.

6. A true and correct copy of a sheet prepared by Defendant's counsel that Douglas Petit used to refresh his memory during his deposition is attached to this declaration as **Exhibit 4**. Exhibit 4 is titled "Notes Regarding Identification of Drivers Driving in CA." Mr. Petit testified that, to his knowledge, this is sheet was prepared by Defendant's counsel. *See* Douglas Petit deposition ("DP depo."), 69:1-8. It is not bates labeled. It states that, while Defendant is not aware of any data to identify which of its drivers drove through California between December 2010 and the present, it has data regarding the location of each load that could be used to estimate the number of drivers who performed work duties in California from December 1, 2010 and the present (*see* Exhibit 21 below). It also states that Defendant has estimated that there are 3,957 California resident drivers who picked up or dropped off a load in California for the period of July 1, 2012 through December 31, 2015, of whom 1,133 are California residents.

7. A true and correct copy of Plaintiff Donald Harrington's Request for Production of Documents and Tangible things to Defendant Marten Transport, LTD., Set No. 2 is attached to this declaration as **Exhibit 5**. In response to these requests, Defendant produced all the materials, manuals, handbooks and policies, putative class members' payroll records, trip sheets, Department of Transportation logs, agreements, waivers, and authorization forms referred in its Initial Disclosures (*see* Exhibit 9). These materials and policies are attached to and discussed in this declaration.

8. A true and correct copy of Defendant's "Operations Mission Statement" dated October 2012 and bates labeled by Defendant as DEF0000521 and produced in response to Plaintiff Donald Harrington's Request for Production of Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (*see* Exhibit 2) is attached to this declaration as **Exhibit 6**. It states, "To pick up

1 and deliver the produce damage free, on-time and in the most cost-effective  
2 manner.”

3 9. A true and correct copy of Defendant’s Out Of Route Miles and On  
4 Time Appointments policies dated October 2012 and bates labeled by Defendant  
5 as DEF0000525 and produced in response to Plaintiff Donald Harrington’s  
6 Request for Production of Documents and Tangible Things to Defendant Marten  
7 Transport, Ltd., Set No. 1 (see Exhibit 2) are attached to this declaration as  
8 **Exhibit 7**. It states as follows:

9 a. Any mile outside of the most direct route to a destination is an  
10 out of route mile. The document states, “Miles put on the truck for reasons that are  
11 not related to the route the customer ahs [*sic*] requested are also considered out of  
12 route, such as obtaining fuel, service work on equipment, pick up or delivery of  
13 pallets, traffic issues, weather and personal use....” (emphasis added). *See also*  
14 Exhibit 10, page 24.

15 b. Mr. Petit testified that “personal” use means meals and rest  
16 breaks. DP depo., 123:20-25. It continues, “violation of this policy is ground for  
17 disciplinary action up to and including termination of employment.”  
18 Preauthorization from a fleet manager is required for out of route miles. The  
19 document also states, “employees are responsible for on-time appointments to  
20 Marten Transport customers.”

21 10. A true and correct copy of Plaintiff Donald Harrington’s Amended  
22 Notice of Deposition of Defendant’s persons most knowledgeable (“PMK  
23 Deposition Notice”) is attached to this declaration as **Exhibit 8**. It states six  
24 subjects for deposition examination:

25 a. Defendant’s driver compensation plans for the period  
26 beginning December 1, 2010 to the present;

27 b. Defendant’s rest and meal period policies for Defendants’  
28 drivers who spent all or part of their worktime within the State of California for



1 the period beginning December 1, 2010 to the present;

2 c. The number of Defendants' drivers who spent all or part of  
3 their worktime within the State of California for the period beginning December  
4 1, 2010 to the present;

5 d. The contact information for drivers who spent all or part of  
6 their worktime within the State of California for the period beginning December  
7 1, 2010 to the present;

8 e. Defendant's recordkeeping concerning the work-related  
9 activities of drivers who spent all or part of their worktime within the State of  
10 California for the period beginning December 1, 2010 to the present; and

11 f. Defendant's background checks on prospective employees for  
12 the period beginning December 1, 2009 to the present.

13 11. A true and correct copy of Defendant's initial disclosures statement  
14 of June 8, 2015 is attached to this declaration as **Exhibit 9**. In it, Defendant lists  
15 Tim Norlin as a person knowledgeable about "forms and authorizations used by  
16 Defendant Marten Transport LTD in the process of hiring truck drivers; and  
17 Defendant Marten Transport LTD's policies and procedures regarding prospective  
18 truck driver background checks." Defendant lists as documents it may use in  
19 support of its claims or defenses the following: driver trip sheets, operator  
20 settlements, time cards, Department of Transportation logs, relevant policies, on-  
21 duty meal period agreements, meal period waivers and authorization forms signed  
22 by putative class members. The only authorization forms Plaintiffs are aware of to  
23 date are those their attorneys have obtained from putative class members to obtain  
24 their records from Defendant. Defendant has not produced any on duty meal  
25 period agreements or meal period waivers that predate its initial disclosure  
26 statement. Other than driver manuals and handbooks, Defendant has not produced  
27 any policies that predate its initial disclosures statement. Defendant has not  
28 produced policies on meal or rest periods that predate its initial disclosures



1 statement. Defendant has not produced any documents entitled “trip sheets.”  
2 Defendant has not produced any documents entitled “time cards.” Defendant  
3 contends “the FAAAA pre-empts Plaintiff’s wage and hour claims.” (14:24-25).

4 12. A true and correct copy of Defendant’s Driver Employee Handbook  
5 dated October 1, 2012 bates labeled by Defendant as DEF0000328-DEF0000365  
6 and produced in response to Plaintiff Donald Harrington’s Request for Production  
7 of Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No.  
8 1 (see Exhibit 2) is attached to this declaration as **Exhibit 10**. It states as follows:

9 a. On page 2, Defendant requires driver employees to comply  
10 with all of its policies. It makes no mention of rest and meal periods.

11 b. It states on pages 3 and 4 that Defendant specializes in  
12 transport of temperature controlled and perishable products.

13 c. On page 6, Defendant states that it employs more than 2,700  
14 people.

15 d. On page 12, Defendant acknowledges that federal law requires  
16 it to “keep an accurate record of time worked, which is all time actually spent on  
17 the job performing assigned duties...”

18 e. On page 22, Defendant states its policy on “securing company  
19 equipment.” It states, “Equipment must stay within employee's sight unless prior  
20 authorization from Fleet Manager.” The policy makes no exceptions for meal  
21 periods. *See also* DEF0000945 (Ex. 14), DEF0002974 (Ex. 26), DEF0000527  
22 (Ex. 68), DEF0002289 (Ex. 69), DEF0001077 (Ex. 80), DEF0001249 (Ex. 80),  
23 DEF0001831 (Ex. 81), and DEF0002048-DEF0002049 (Ex. 82).

24 f. On page 23, Defendant states that if unauthorized “personal  
25 use” of equipment occurs, Defendant will charge the employee \$2 per  
26 unauthorized mile (*see also* Exhibit 7).

27 g. There is no discussion of rest or meal periods in the Handbook  
28 (or any of its handbooks or driver manuals).

1           h. On page 25, Defendant requires drivers to spend time  
2 undergoing drug tests. There is no discussion of whether Defendant compensates  
3 the drivers for such time apart from their mileage based and flat rate pay.

4           i. On page 31, Defendant states that it maintains resident  
5 addresses for its drivers. Such information will enable the Court to ascertain  
6 which of Defendant's drivers are California-based, and, as Plaintiffs contend, are  
7 subject to California wage and hour protections.

8           13. A true and correct copy of Plaintiff Donald Harrington's Request for  
9 Production of Documents and Tangible things to Defendant Marten Transport,  
10 LTD., Set No. 3 is attached to this declaration as **Exhibit 11**. In response to these  
11 requests, Defendant produced records of putative class members who authorized  
12 Plaintiffs' counsel to request records on their behalf, including applications, driver  
13 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
14 satellite messages, agreements, background checks, and acknowledgments of  
15 receipt of employment policies and procedures.

16           14. A true and correct copy of Defendant's Driver Employee Manual  
17 (California Supplement) dated March 2013 which Defendant bates labeled  
18 DEF0001015-DEF0001028 and produced in response to Plaintiff Donald  
19 Harrington's Request for Production of Documents and Tangible Things to  
20 Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this  
21 declaration as **Exhibit 12**. It states that it applies to "employees who work in the  
22 State of California." There is no discussion of rest or meal periods in the  
23 Supplement.

24           15. A true and correct copy of page 127 of Defendant's Driver Employee  
25 Manual dated December 2014 which Defendant bates labeled DEF0000739 and  
26 produced in response to Plaintiff Donald Harrington's Request for Production of  
27 Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1  
28 (see Exhibit 2) is attached to this declaration as **Exhibit 13**. It states as follows: "If

1 the employee leaves a placarded vehicle [a vehicle carrying hazardous materials]  
2 in the care of another person, that person must be:” “Awake and able to move the  
3 vehicle” and “stay within 100 feet of the vehicle.” Presumably, a person who is  
4 “able” to move the vehicle is another licensed truck driver.

5 16. A true and correct copy of Defendant’s Securement of Company  
6 Equipment policy dated March 2014 and bates labeled by Defendant as  
7 DEF0000945 and produced in response to Plaintiff Donald Harrington’s Request  
8 for Production of Documents and Tangible Things to Defendant Marten  
9 Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this declaration as **Exhibit**  
10 **14**. It states as follows: “Equipment must stay within site [*sic*] of the employee  
11 unless prior authorization is received from his/her Fleet Manager. The  
12 authorization must also include a secure location for the equipment.”

13 17. A true and correct copy of page 118 of Defendant’s Driver Employee  
14 Manual dated December 2014 is attached to this declaration as **Exhibit 15**.  
15 Defendant bates labeled DEF0000730 and produced in response to Plaintiff  
16 Donald Harrington’s Request for Production of Documents and Tangible Things  
17 to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2). It states that there  
18 are special handling procedures for hazardous materials.

19 18. True and correct copies of pages 62-63 of Defendant’s Driver  
20 Employee Manual dated December 2014 are attached collectively as **Exhibit 16**.  
21 Defendant bates labeled DEF0000674-DEF0000675 and produced in response to  
22 Plaintiff Donald Harrington’s Request for Production of Documents and Tangible  
23 Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2). It shows  
24 the Qualcomm macro (code) for a driver to acknowledge in writing that he/she  
25 accepts full responsibility for the security of the tractor, trailer and load “per  
26 Marten standards.” It also presents the macro for “running late.”

27 19. A true and correct copy of Defendant’s “Produce Loading/Transit  
28 Expectations” dated October 2012 and bates labeled by Defendant as

1 DEF0000534 and produced in response to Plaintiff Donald Harrington's Request  
2 for Production of Documents and Tangible Things to Defendant Marten  
3 Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this declaration as **Exhibit**  
4 **17**. It states, "Keep transit times to an absolute minimum and be on time. Late  
5 produce loads often result in a **claim!**"

6 20. True and correct copies of Excerpts from Defendant's Driver  
7 Employee Manual dated July 2015 is attached to this declaration as **Exhibit 18**.  
8 Defendant bates labeled DEF0002216-DEF0002255 and produced in response to  
9 Plaintiff Donald Harrington's Request for Production of Documents and Tangible  
10 Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2). There is no  
11 discussion of rest or meal periods in the Manual. Defendant designates the  
12 document as confidential.

13 21. True and correct copies of excerpts of the "Toll Info" records  
14 Defendant maintained and bates labeled DEF0002978 and produced in response to  
15 Plaintiff Donald Harrington's Request for Production of Documents and Tangible  
16 Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) are  
17 collectively attached to this declaration as **Exhibit 19** in redacted form. Per the  
18 agreement of the parties, this document has been redacted of all names and  
19 employee identification numbers to protect the privacy of the employee's  
20 identifying and contact information. These electronic records show the dates,  
21 times and cities of tolls that one of Defendant's drivers passed through between  
22 June 20 and July 8, 2012.

23 22. True and correct copies of excerpts from "Fuelings" records  
24 Defendant maintained and bates labeled DEF0002976 and produced in response to  
25 Plaintiff Donald Harrington's Request for Production of Documents and Tangible  
26 Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) are  
27 collectively attached to this declaration as **Exhibit 20** in redacted form. Per the  
28 agreement of the parties, this document has been redacted of all names and

1 employee identification numbers to protect the privacy of the employee's  
2 identifying and contact information. Defendant requires its drivers "to keep  
3 records of their fueling events." DP depo., 107:11-15. These electronic records  
4 show the dates, times, cities and states of fuelings by one of Defendant's drivers  
5 between May 5, 2012 and January 15, 2013.

6 23. True and correct copies of excerpts of the "Loading-Unloading"  
7 records Defendant maintained and bates labeled DEF0002977 and produced in  
8 response to Plaintiff Donald Harrington's Request for Production of Documents  
9 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit  
10 2) are collectively attached to this declaration as **Exhibit 21** in redacted form. Per  
11 the agreement of the parties, this document has been redacted of all names and  
12 employee identification numbers to protect the privacy of the employee's  
13 identifying and contact information. These electronic records show the cities and  
14 states where pick-ups and deliveries by one of Defendant's drivers took place.

15 24. True and correct copies of excerpts from satellite computer  
16 messaging records Defendant maintained and bates labeled DEF0007508 in  
17 response to Plaintiff Donald Harrington's Request for Production of Documents  
18 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 9 (see Exhibit  
19 47) are collectively attached to this declaration as **Exhibit 22** in redacted form.  
20 Per the agreement of the parties, this document has been redacted of all names and  
21 employee identification numbers to protect the privacy of the employee's  
22 identifying and contact information. These electronic records show the dates and  
23 times of messages between Defendant and one of Defendant's drivers between  
24 10:29 am and 5:36 pm on February 7, 2012, including one message from  
25 Defendant to the driver that states, "DELIVERIES ARE HOT! CAN UNLOAD  
26 ALL DAY UNTIL 1830 AND THEN FROM 2200-2359. MUST DELIVER  
27 BEFORE 2359. YOU CAN TAKE BREAK THERE AT RECEIVING  
28 FACILITY! LUMPER INFO FOR TRIP # \_\_\_\_\_. Can you make that \_\_\_\_\_?"

1 These records also show the tractor number in the far left column (redacted).

2 25. True and correct copies of excerpts from satellite computer  
3 messaging records Defendant maintained and bates labeled DEF0006712 in  
4 response to Plaintiff Donald Harrington's Request for Production of Documents  
5 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 7 (see Exhibit  
6 46) are collectively attached to this declaration as **Exhibit 23** in redacted form.  
7 Per the agreement of the parties, this document has been redacted of all names and  
8 employee identification numbers to protect the privacy of the employee's  
9 identifying and contact information. These electronic records show the dates and  
10 times of messages between Defendant and one of Defendant's drivers between  
11 8:06 pm and 10:18 pm on May 1, 2015, including one message from Defendant to  
12 the driver that states, "HOT LOADS AND CANNOT FAIL!! \*\* CALIFORNIAA  
13 LOADS- \_DO NOT ROUTE THROUGH UTAH." This message includes the  
14 load number. These records also show the tractor number in the far left column  
15 (redacted).

16 26. True and correct copies of excerpts from satellite computer  
17 messaging records Defendant maintained and bates labeled DEF0007537 in  
18 response to Plaintiff Donald Harrington's Request for Production of Documents  
19 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 9 (see Exhibit  
20 47) are collectively attached to this declaration as **Exhibit 24** in redacted form.  
21 Per the agreement of the parties, this document has been redacted of all names and  
22 employee identification numbers to protect the privacy of the employee's  
23 identifying and contact information. These electronic records show the dates and  
24 times of messages between Defendant and one of Defendant's drivers on August  
25 25, 2011, including one message from Defendant to the driver that states,  
26 "CANNOT DROP LOAD ENROUTE...PLSE MAKE SURE YOU HAVE A  
27 LOCK ON YOUR TRL WTH THESE LOADS...VERY CRITICAL...DO NOT  
28 LEAVE LOAD UNATTENDED...TRL MUST BE DRY\*\*\*" These records also



1 show the tractor number in the far left column (redacted).

2 27. True and correct copies of excerpts from satellite computer  
3 messaging records Defendant maintained and bates labeled DEF0002973 in  
4 response to Plaintiff Donald Harrington's Request for Production of Documents  
5 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit  
6 2) are collectively attached to this declaration as **Exhibit 25** in redacted form. On  
7 the third page, there is a message from Defendant to a driver that states, "CAN  
8 ONLY CHECK IN AN HOUR EARLY, AFTER IN GATE THEN CAN PARK  
9 IN BAC OF FACILITY TO BREAK." These records also show the tractor  
10 number in the far left column (redacted).

11 28. True and correct copies of excerpts from satellite computer  
12 messaging records Defendant maintained and bates labeled DEF0002974 in  
13 response to Plaintiff Donald Harrington's Request for Production of Documents  
14 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit  
15 2) are collectively attached to this declaration as **Exhibit 26** in redacted form. Per  
16 the agreement of the parties, this document has been redacted of all names and  
17 employee identification numbers to protect the privacy of the employee's  
18 identifying and contact information. On the first page, there is a message from  
19 Defendant to a driver that states, "DRIVERS ARE TO STAY IN TRUCK AT  
20 ALL TIMES." On the final page, Defendant messages the driver, "...THEY  
21 HAVE A SECURED YARD AND CAN PARK OVERNIGHT BUT MUST  
22 STAY WITH TRUCK PER \_\_\_\_\_.\" These records also show the tractor  
23 number in the far left column (redacted).

24 29. A true and correct copy of Plaintiff Donald Harrington's Request for  
25 Production of Documents and Tangible things to Defendant Marten Transport,  
26 LTD., Set No. 4 is attached to this declaration as **Exhibit 27** In response to these  
27 requests, Defendant produced records of putative class members who authorized  
28 Plaintiffs' counsel to request records on their behalf, including applications, driver



1 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
2 satellite messages, agreements, background checks, and acknowledgments of  
3 receipt of employment policies and procedures.

4 30. True and correct copies of excerpts from “HOS Log Detail” records  
5 Defendant maintained and bates labeled DEF0006402 and produced in response to  
6 Plaintiff Donald Harrington’s Request for Production of Documents and Tangible  
7 Things to Defendant Marten Transport, Ltd., Set No. 7 (see Exhibit 46) are  
8 collectively attached to this declaration as **Exhibit 28** in redacted form. Per the  
9 agreement of the parties, this document has been redacted of all names and  
10 employee identification numbers to protect the privacy of the employee’s  
11 identifying and contact information. These records show the driver #, driver name,  
12 tractor #, fleet #, activity (off duty, on duty, sleeper, driving), start time, duration,  
13 state (Indiana, Wisconsin, Iowa, etc.), odometer and distance driven.

14 31. True and correct copies of excerpts from “HOS Log Summary”  
15 records Defendant maintained and bates labeled DEF0006403 and produced in  
16 response to Plaintiff Donald Harrington’s Request for Production of Documents  
17 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 7 (see Exhibit  
18 46) are collectively attached to this declaration as **Exhibit 29** in redacted form.  
19 Per the agreement of the parties, this document has been redacted of all names and  
20 employee identification numbers to protect the privacy of the employee’s  
21 identifying and contact information. These records show the driver #, driver name,  
22 date, tractor #, fleet #, available driving, driving hours, today on duty, total on  
23 duty, today drive, today off duty, today sleeper, date and time, and activity (off  
24 duty, sleeper).

25 32. A true and correct copy of a December 2014 model bill of lading  
26 (BOL) that Defendant bated labeled DEF0000712 and produced in response to  
27 Plaintiff Donald Harrington’s Request for Production of Documents and Tangible  
28 Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) is attached

1 to this declaration as **Exhibit 30**. It states the load #, driver #, tractor #, trailer #,  
2 driver name, fleet manager, shipper, delivery date, receiver and stops. It also  
3 shows the pick-up and delivery cities and states.

4 33. True and correct copies of Defendant's Qualcomm Macros Used  
5 Regularly and bates labeled DEF0002784 through DEF0002788 and DEF0000441  
6 and produced in response to Plaintiff Donald Harrington's Request for Production  
7 of Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No.  
8 1 (see Exhibit 2) are collectively attached to this declaration as **Exhibit 31**. It  
9 shows that drivers can report when they arrive at a delivery destination with  
10 Macro 22. The discussion of Marco 35 indicates that pickups and deliveries are  
11 time sensitive and on set schedules.

12 34. A true and correct copy of Plaintiff Donald Harrington's Request for  
13 Production of Documents and Tangible things to Defendant Marten Transport,  
14 LTD., Set No. 5 is attached to this declaration as **Exhibit 32**. In response to these  
15 requests, Defendant produced records of putative class members who authorized  
16 Plaintiffs' counsel to request records on their behalf, including applications, driver  
17 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
18 satellite messages, agreements, background checks, and acknowledgments of  
19 receipt of employment policies and procedure.

20 35. True and correct copies of driver settlements (also known as  
21 settlement details, operator settlements, and pay stubs) for one of Defendant's flat  
22 day rate drivers (for the purposes of this declaration identified anonymously as  
23 driver # 1) for the periods of March 21 through March 27, 2012 and March 28,  
24 2012 through April 3, 2012 that Defendant bates labeled DEF0003476 through  
25 DEF0003478 and produced in response to Plaintiff Donald Harrington's Request  
26 for Production of Documents and Tangible Things to Defendant Marten  
27 Transport, Ltd., Set No. 3 (see Exhibit 11) are attached collectively as **Exhibit 33**  
28 in redacted form. Per the agreement of the parties, this document has been

1 redacted of all names, addresses, account information, and employee identification  
2 numbers to protect the privacy of the employee's identifying and contact  
3 information. The codes of each form of compensation do not show hourly pay for  
4 work or rest periods, nor do they show a total for all hours worked.

5 36. True and correct copies of driver settlements for one of Defendant's  
6 drivers (for the purposes of this declaration identified anonymously as driver # 2)  
7 for three pay periods in 2010 Defendant bates labeled DEF0002981 through  
8 DEF0002983 and produced in response to Plaintiff Donald Harrington's Request  
9 for Production of Documents and Tangible Things to Defendant Marten  
10 Transport, Ltd., Set No. 6 (see Exhibit 35) are attached collectively as **Exhibit 34**  
11 in redacted form. Per the agreement of the parties, this document has been  
12 redacted of all names, addresses, account information, and employee identification  
13 numbers to protect the privacy of the employee's identifying and contact  
14 information. They show flat rate compensation but no hourly compensation for  
15 work or rest periods, or a total for all hours worked.

16 37. A true and correct copy of Plaintiff Donald Harrington's Request for  
17 Production of Documents and Tangible things to Defendant Marten Transport,  
18 LTD., Set No. 6 is attached to this declaration as **Exhibit 35**. In response to these  
19 requests, Defendant produced records of putative class members who authorized  
20 Plaintiffs' counsel to request records on their behalf, including applications, driver  
21 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
22 satellite messages, agreements, background checks, and acknowledgments of  
23 receipt of employment policies and procedure.

24 38. True and correct copies of operator settlements for Plaintiff Donald  
25 Harrington bates labeled by Defendant DEF000244 through DEF000324 and  
26 produced in response to Plaintiff Donald Harrington's Request for Production of  
27 Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1  
28 (see Exhibit 2) are attached collectively as **Exhibit 36** in redacted form. Per the

1 agreement of the parties, this document has been redacted of all names, addresses,  
2 and employee identification numbers to protect the privacy of the identifying and  
3 contact information. They show mileage based compensation per day but no  
4 hourly compensation for work or rest periods, or a total for all hours worked.

5 39. A true and correct copy of Plaintiff Donald Harrington's application  
6 for employment with Defendant through Layover.com dated November 6, 2010  
7 and bates labeled by Defendant DEF0000004 through DEF0000006 and produced  
8 in response to Plaintiff Donald Harrington's Request for Production of Documents  
9 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit  
10 2) is attached to this declaration as **Exhibit 37** in redacted form. Per the agreement  
11 of the parties, this document has been redacted of all names, addresses, social  
12 security numbers, and employee identification numbers to protect the privacy of  
13 the identifying and contact information. In the application, Harrington  
14 acknowledged, "I have completed this application of my own free will and hold  
15 Layover.com harmless of all liability for providing this application for my use."

16 40. A true and correct copy of one of Defendant's drivers' (for the  
17 purposes of this declaration identified anonymously as driver # 3) application with  
18 Defendant dated November 7, 2011 and bates labeled by Defendant DEF0003485  
19 and produced in response to Plaintiff Donald Harrington's Request for Production  
20 of Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No.  
21 5 (see Exhibit 32) is attached to this declaration as **Exhibit 38** in redacted form.  
22 Per the agreement of the parties, this document has been redacted of all names,  
23 addresses, and employee identification numbers to protect the privacy of the  
24 employee's identifying and contact information. In the application, the driver  
25 acknowledges, "I authorize release of any information, including all information  
26 related to any alcohol and controlled substance testing and training records as  
27 required by the Federal Motor Carrier Safety Regulations 49 CFR Parts 40, 391 or  
28 382, by any past or current employers. I hereby release all such persons from any

1 liability or damages.”

2 41. A true and correct copy of a portion of one of Defendant’s drivers’  
3 (for the purposes of this declaration identified anonymously as driver # 3)  
4 application with Defendant dated February 26, 2013 and bates labeled by  
5 Defendant DEF0003546 and produced in response to Plaintiff Donald  
6 Harrington’s Request for Production of Documents and Tangible Things to  
7 Defendant Marten Transport, Ltd., Set No. 5 (see Exhibit 32) is attached to this  
8 declaration as **Exhibit 39** in redacted form. Per the agreement of the parties, this  
9 document has been redacted of all names, addresses, and employee identification  
10 numbers to protect the privacy of the employee’s identifying and contact  
11 information.

12 42. A true and correct copy of a portion of one of Defendant’s drivers’  
13 (for the purposes of this declaration identified anonymously as driver # 4)  
14 application with Defendant dated April 21, 2009 and bates labeled by Defendant  
15 DEF0003592 and produced in response to Plaintiff Donald Harrington’s Request  
16 for Production of Documents and Tangible Things to Defendant Marten  
17 Transport, Ltd., Set No. 4 (see Exhibit 27) is attached to this declaration as  
18 **Exhibit 40** in redacted form. Per the agreement of the parties, this document has  
19 been redacted of all names, addresses, and employee identification numbers to  
20 protect the privacy of the employee’s identifying and contact information. It  
21 states, “I authorize release of any information, including all information related to  
22 any alcohol and controlled substance testing and training records as required by  
23 the Federal Highway Administration (FHWA) 49 CFR Parts 391 or 382, by any  
24 past or current employers. I hereby release all such persons from any liability or  
25 damages.”

26 43. A true and correct copy of one of Defendant’s drivers’ (for the  
27 purposes of this declaration identified anonymously as driver # 5) Driver  
28 Authorization to Release Records with Defendant dated March 7, 2012 which

1 Defendant bates labeled DEF0006123 and produced in response to Plaintiff  
2 Donald Harrington's Request for Production of Documents and Tangible Things  
3 to Defendant Marten Transport, Ltd., Set No. 3 (see Exhibit 11) is attached to this  
4 declaration as **Exhibit 41** in redacted form. Per the agreement of the parties, this  
5 document has been redacted of all names, addresses, social security numbers, and  
6 employee identification numbers to protect the privacy of the employee's  
7 identifying and contact information. It states, "I authorize release of any  
8 information, including all information related to any alcohol and controlled  
9 substance testing and training records as required by the Federal Motor Carrier  
10 Safety Regulations 49 CFR Parts 40, 391 or 382, by any past or current  
11 employers. I hereby release all such persons from any liability or damages."

12 44. A true and correct copy of Donald Harrington's Company Driver  
13 Application with Defendant dated April 30, 2012 and bates labeled by Defendant  
14 DEF0000007 through DEF0000010 and produced in response to Plaintiff Donald  
15 Harrington's Request for Production of Documents and Tangible Things to  
16 Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this  
17 declaration as **Exhibit 42** in redacted form. Per the agreement of the parties, this  
18 document has been redacted of all names, addresses, social security numbers, and  
19 employee identification numbers to protect the privacy of the identifying and  
20 contact information. It states, "I authorize release of any information, including all  
21 information related to any alcohol and controlled substance testing and training  
22 records as required by the Federal Motor Carrier Safety Regulations 49 CFR Parts  
23 40, 391 or 382, by any past or current employers. I hereby release all such persons  
24 from any liability or damages."

25 45. A true and correct copy of Plaintiff Donald Harrington's Driver  
26 Authorization to Release Records with Defendant dated April 11, 2012 and bates  
27 labeled DEF0000017 and produced in response to Plaintiff Donald Harrington's  
28 Request for Production of Documents and Tangible Things to Defendant Marten



1 Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this declaration as **Exhibit**  
2 **43** in redacted form. Per the agreement of the parties, this document has been  
3 redacted of all names, addresses, social security numbers, and employee  
4 identification numbers to protect the privacy of the identifying and contact  
5 information. It states, “I authorize release of any information, including all  
6 information related to any alcohol and controlled substance testing and training  
7 records as required by the Federal Motor Carrier Safety Regulations 49 CFR Parts  
8 40, 391 or 382, by any past or current employers. I hereby release all such persons  
9 from any liability or damages.”

10 46. A true and correct copy of Plaintiff Donald Harrington’s  
11 Request/Consent for Information from Previous Employer(s)/Carrier(s) for  
12 Alcohol and Controlled Substances Testing Records with Defendant dated April  
13 11, 2012 and bates labeled DEF0000018 and produced in response to Plaintiff  
14 Donald Harrington’s Request for Production of Documents and Tangible Things  
15 to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this  
16 declaration as **Exhibit 44** in redacted form. Per the agreement of the parties, this  
17 document has been redacted of all names, addresses, social security numbers, and  
18 employee identification numbers to protect the privacy of the employee’s  
19 identifying and contact information. It states, “I authorize release of any  
20 information, including all information related to any alcohol and controlled  
21 substance testing and training records as required by the Federal Motor Carrier  
22 Safety Regulations 49 CFR Parts 40, 391 or 382, by any past or current  
23 employers. I hereby release all such persons from any liability or damages.”

24 47. A true and correct copy of one of Defendant’s drivers’ (for the  
25 purposes of this declaration identified anonymously as driver # 4) Driver  
26 Authorization to Release Records with Defendant dated March 31, 2009 which  
27 Defendant bates labeled DEF-003603 and produced in response to Plaintiff  
28 Donald Harrington’s Request for Production of Documents and Tangible Things



1 to Defendant Marten Transport, Ltd., Set No. 4 (see Exhibit 27) is attached to this  
2 declaration as **Exhibit 45** in redacted form. Per the agreement of the parties, this  
3 document has been redacted of all names, addresses, social security numbers, and  
4 employee identification numbers to protect the privacy of the employee's  
5 identifying and contact information. It states, "I authorize release of any  
6 information, including all information related to any alcohol and controlled  
7 substance testing and training records as required by the Federal Motor Carrier  
8 Safety Regulations 49 CFR Parts 40, 391 or 382, by any past or current  
9 employers. I hereby release all such persons from any liability or damages."

10 48. A true and correct copy of Plaintiff Donald Harrington's Request for  
11 Production of Documents and Tangible things to Defendant Marten Transport,  
12 LTD., Set No. 7 is attached to this declaration as **Exhibit 46**. In response to these  
13 requests, Defendant produced records of putative class members who authorized  
14 Plaintiffs' counsel to request records on their behalf, including applications, driver  
15 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
16 satellite messages, agreements, background checks, and acknowledgments of  
17 receipt of employment policies and procedure.

18 49. A true and correct copy of Plaintiff Donald Harrington's Request for  
19 Production of Documents and Tangible things to Defendant Marten Transport,  
20 LTD., Set No. 9 is attached to this declaration as **Exhibit 47**. In response to these  
21 requests, Defendant produced records of putative class members who authorized  
22 Plaintiffs' counsel to request records on their behalf, including applications, driver  
23 authorizations, settlement details, operator settlements, pay stubs, driver logs,  
24 satellite messages, agreements, background checks, and acknowledgments of  
25 receipt of employment policies and procedure.

26 50. True and correct copies of excerpts of the transcript of the deposition  
27 of Douglas Petit, Defendant's Senior Vice President of Operations, who it  
28 designated as its person most knowledgeable in response to Plaintiff Donald

1 Harrington's Fed.R.Civ.Proc. 30(b)(6) notice on the subjects of Defendant's meal  
2 and rest period policies, the number of and the contact information of the drivers  
3 who spent all or part of their worktime within the state of California, and  
4 Defendant's recordkeeping of the drivers' work-related activities (*see* PMK  
5 Deposition Notice, Exhibit 8, above), taken in this matter on August 31, 2016 are  
6 collectively attached to this declaration as **Exhibit 48**. DP depo., 12:7-11, 13: 16-  
7 17, 129:3-20.

8 51. True and correct copies of excerpts of the transcript of the deposition  
9 of Timothy Norlin, Defendant's Senior Director of Driver Development, who it  
10 designated as its person most knowledgeable in response to Plaintiff Donald  
11 Harrington's Fed.R.Civ.Proc. 30(b)(6) notice on the subjects of Defendant's  
12 driver compensation plans and Defendant's background checks on prospective  
13 employees (*see* PMK Deposition Notice, Exhibit 8, above), taken in this matter on  
14 September 1, 2016 are collectively attached to this declaration as **Exhibit 49**. Mr.  
15 Norlin testified that he was familiar with the Wage Order and its meal and rest  
16 period requirements. TN depo., 81:2-82:2.

17 52. A true and correct copy of the Declaration of Brian Kriegler, Ph.D.  
18 filed on October 13, 2016 in support of Plaintiff Donald Harrington's Motion for  
19 Class Certification (ECF Docket No. 64) is attached to this declaration as **Exhibit**  
20 **50**.

21 53. A true and correct copy of the document Defendant labeled "loading  
22 unloading" for one of Defendant's drivers (for the purposes of this declaration  
23 identified anonymously as driver # 7) spanning November 3, 2010 through  
24 February 23, 2011 and bates labeled DEF0006544#83E.E04 and produced in  
25 response to Plaintiff Donald Harrington's Request for Production of Documents  
26 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 2 (see Exhibit  
27 5) is attached to this declaration as **Exhibit 51** in redacted form. Per the agreement  
28 of the parties, this document has been redacted of all names and employee

1 identification numbers to protect the privacy of the employee's identifying and  
2 contact information.

3 54. A true and correct copy of the document Defendant labeled "loading  
4 unloading" for one of Defendant's drivers (for the purposes of this declaration  
5 identified anonymously as driver # 8) spanning June 10, 2011 through November  
6 18, 2011 and bates labeled DEF0006559#0A1.558 and produced in response to  
7 Plaintiff Donald Harrington's Request for Production of Documents and Tangible  
8 Things to Defendant Marten Transport, Ltd., Set No. 2 (see Exhibit 5) is attached  
9 to this declaration as **Exhibit 52** in redacted form. Per the agreement of the  
10 parties, this document has been redacted of all names and employee identification  
11 numbers to protect the privacy of the employee's identifying and contact  
12 information.

13 55. True and correct copies of excerpts from the document Defendant  
14 labeled "HOS Log Detail" for two of Defendant's drivers (for the purposes of this  
15 declaration identified anonymously as driver # 9) spanning July 21, 2014 through  
16 August 2, 2015 and bates labeled DEF0006392#515.ECE in response to Plaintiff  
17 Donald Harrington's Request for Production of Documents and Tangible Things  
18 to Defendant Marten Transport, Ltd., Set No. 2 (see Exhibit 5) and driver # 4  
19 spanning August 5, 2014 through August 13, 2014 and bates labeled  
20 DEF0003089#28E.CEF in response to Plaintiff Donald Harrington's Request for  
21 Production of Documents and Tangible Things to Defendant Marten Transport,  
22 Ltd., Set No. 4 (see Exhibit 27) are collectively attached to this declaration as  
23 **Exhibit 53** in redacted form. Per the agreement of the parties, this document has  
24 been redacted of all names and employee identification numbers to protect the  
25 privacy of the employee's identifying and contact information. These records also  
26 show the tractor number (redacted).

27 56. A true and correct copy of Defendant's fuel records for one of  
28 Defendant's drivers (for the purposes of this declaration identified anonymously

1 as driver # 7) spanning the period of December 2, 2010 through February 22, 2011  
2 bates labeled DEF0006565#545.2F4 in response to Plaintiff Donald Harrington's  
3 Request for Production of Documents and Tangible Things to Defendant Marten  
4 Transport, Ltd., Set No. 2 (see Exhibit 5) is attached to this declaration as **Exhibit**  
5 **54** in redacted form. Per the agreement of the parties, this document has been  
6 redacted of all names and employee identification numbers to protect the privacy  
7 of the employee's identifying and contact information.

8 57. A true and correct copy of Defendant's payroll records spreadsheet  
9 for one of Defendant's drivers (for the purposes of this declaration identified  
10 anonymously as driver # 8) spanning the period of June 17, 2011 through January  
11 13, 2012 bates labeled DEF0006560#BCD.753 in response to Plaintiff Donald  
12 Harrington's Request for Production of Documents and Tangible Things to  
13 Defendant Marten Transport, Ltd., Set No. 2 (see Exhibit 5) is attached to this  
14 declaration as **Exhibit 55** in redacted form. Per the agreement of the parties, this  
15 document has been redacted of all names and employee identification numbers to  
16 protect the privacy of the employee's identifying and contact information.

17 58. A true and correct copy of Defendant's payroll records spreadsheet  
18 for one of Defendant's drivers (for the purposes of this declaration identified  
19 anonymously as driver # 8) spanning the period of November 5, 2010 through  
20 March 11, 2011 bates labeled DEF0006545#27D.88E in response to Plaintiff  
21 Donald Harrington's Request for Production of Documents and Tangible Things  
22 to Defendant Marten Transport, Ltd., Set No. 2 (see Exhibit 5) is attached to this  
23 declaration as **Exhibit 56** in redacted form. Per the agreement of the parties, this  
24 document has been redacted of all names and employee identification numbers to  
25 protect the privacy of the employee's identifying and contact information.

26 59. True and correct copies of excerpts from Defendant's satellite  
27 messaging records spreadsheet for Plaintiff Donald Harrington for the period of  
28 May 29, 2013 through January 13, 2014 bates labeled DEF0002975^75C.1A6 and

1 produced in response to Plaintiff Donald Harrington's Request for Production of  
2 Documents and Tangible Things to Defendant Marten Transport, Ltd., Set No. 2  
3 (see Exhibit 5) is attached to this declaration as **Exhibit 57** in redacted form. Per  
4 the agreement of the parties, this document has been redacted of all names and  
5 employee identification numbers to protect the privacy of the employee's  
6 identifying and contact information. These records also show the tractor number  
7 (redacted).

8 60. A true and correct copy of Defendant's toll records for Donald  
9 Harrington for the period of June 18, 2012 through November 8, 2012 bates  
10 labeled DEF0002978^1A7.81B and produced in response to Plaintiff Donald  
11 Harrington's Request for Production of Documents and Tangible Things to  
12 Defendant Marten Transport, Ltd., Set No. 2 (see Exhibit 5) is attached to this  
13 declaration as **Exhibit 58** in redacted form. Per the agreement of the parties, this  
14 document has been redacted of all names and employee identification numbers to  
15 protect the privacy of the employee's identifying and contact information. These  
16 records also show the tractor number (redacted).

17 61. Omitted by Plaintiffs.

18 62. A true and correct copy of Plaintiff Donald Harrington's letter to the  
19 California Labor and Workforce Development Agency dated November 25, 2014  
20 is attached to this declaration as **Exhibit 59**.

21 63. A true and correct copy of Plaintiff Donald Harrington's complaint  
22 filed on December 1, 2014 in the Los Angeles Superior Court, Case No.  
23 BC565214 (ECF Docket No. 1-1), is attached to this declaration as **Exhibit 60**.

24 64. A true and correct copy of Plaintiff Donald Harrington's First  
25 Amended Complaint dated August 17, 2015 (ECF Docket No. 21) is attached to  
26 this declaration as **Exhibit 61**. In paragraph 11, Plaintiff Donald Harrington  
27 defines the classes as follows: (A) **Truck Driver Class**: All persons Defendants  
28 employed in California as truck drivers and in other comparable positions at any

1 time during the period beginning four years prior to the filing of this action and  
2 ending on the date that final judgment is entered in this action; and (B) **FCRA**  
3 **Class:** All of Defendants' current, former and prospective applicants for  
4 employment in the United States who applied for a job with Defendants at any  
5 time during the period beginning five years prior to the filing of this action and  
6 ending on the date that final judgment is entered in this action.

7 65. A true and correct copy of Defendant's notice of removal dated  
8 February 27, 2015 (ECF Docket No. 1) is attached to this declaration as **Exhibit**  
9 **62.**

10 66. A true and correct copy of the declaration of Susan Deetz,  
11 Defendant's director of human resources, dated February 27, 2015 (ECF Docket  
12 No. 3) is attached to this declaration as **Exhibit 63.** Defendant attached the  
13 declaration as an exhibit in support of its removal notice. She also states that  
14 Defendant's personnel records pertaining to Plaintiff Donald Harrington show him  
15 to have been a California resident throughout his employment. At paragraph 5,  
16 Ms. Deetz states, "Plaintiff's job title while he worked for Defendant Marten  
17 Transport LTD was Western Regional truck driver. Marten Transport LTD has  
18 employed over 1,060 California residents as truck drivers since December 1,  
19 2010. Since December 1, 2013, Marten Transport LTD has employed over 625  
20 California residents as truck drivers." She also states, "Since January 1, 2010, over  
21 48,920 individuals in the United States have applied for a truck driver position  
22 with Marten Transport LTD."

23 67. A true and correct copy of the Parties' Rule 26(f) Report dated May  
24 22, 2015 (ECF Docket No. 16) is attached to this declaration as **Exhibit 64.** The  
25 Parties state as issues to be resolved by the lawsuit the following: Whether  
26 Defendants failed and continue to fail to provide meal periods and paid rest  
27 periods, free of duty, to class members in violation of the Labor Code and the  
28 applicable IWC Wage Order(s); Whether Defendants engaged in unfair



1 competition within the meaning of Business and Professions Code §§ 17200, *et*  
2 *seq.*, with respect to the class; Whether Defendants failed to timely furnish  
3 accurate itemized statements to class members in conformity with Labor Code §  
4 226(a); Whether class members are entitled to penalties pursuant to Labor Code §  
5 203; Whether Defendants complied with the FCRA with regards to written  
6 disclosures before obtaining a credit or background report; Whether Defendants  
7 willfully failed to comply with the FCRA; and Whether class members are entitled  
8 to restitution of money or property that Defendants may have acquired from them  
9 through alleged Labor Code violations. Defendant states in the report, “As  
10 currently defined and understood, Plaintiff’s subclass with an alleged claim for  
11 violation of the Fair Credit Reporting Act (FCRA) contains over approximately  
12 48,000 individuals throughout the United States, many of whom were never  
13 employees of either Defendant but instead were mere applicants.” (11:5-9).

14 68. A true and correct copy of Defendant’s August 31, 2015 Answer to  
15 Plaintiff Donald Harrington’s First Amended Complaint (ECF Docket No. 25) is  
16 attached to this declaration as **Exhibit 65**. It pleads the following defenses (among  
17 others): (12) preemption by the Federal Aviation Administration Authorization  
18 Act (“FAAAA”), (14) no failure to provide meal and rest periods as required by  
19 California law, and (19) the reports Defendant received for applicants for  
20 employment were not consumer or investigative reports.

21 69. A true and correct copy of the Court’s Order Granting Stipulation Re  
22 Discovery of Putative Class Member Identities and Contact Information dated  
23 September 8, 2015 (ECF Docket No. 26) is attached to this declaration as **Exhibit**  
24 **66**. It obligated Defendant to provide the full names, last known addresses and  
25 phone numbers of truck driver employees for the time period of “December 1,  
26 2010 and ending at the present date” who were California residents during their  
27 employment. Exhibit 66, 3:18-25. Defendant provided such information to the  
28 Court-approved administrator for 1,540 resident drivers and on September 28,



1 2015, the mailing took place.

2 70. True and correct copies of excerpts of several of Defendant's policies  
3 revised in December of 2014 which Defendant bates labeled DEF0000609,  
4 DEF0000637, DEF0000638, DEF0000653, DEF0000670, DEF0000671,  
5 DEF0000689, DEF0000699, DEF0000700, and produced in response to Plaintiff  
6 Donald Harrington's Request for Production of Documents and Tangible Things  
7 to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) are attached to this  
8 declaration as **Exhibit 67**. The following subparagraphs pertain to documents in  
9 Exhibit 67:

- 10 a. At DEF0000637, Defendant requires drivers to spend time  
11 undergoing drug and alcohol tests. There is no discussion of  
12 whether Defendant compensates the drivers for such time apart  
13 from their mileage based and flat rate pay.
- 14 b. At DEF0000653, Defendant requires drivers to spend time  
15 undergoing drug and alcohol tests. There is no discussion of  
16 whether Defendant compensates the drivers for such time apart  
17 from their mileage based and flat rate pay.
- 18 c. At DEF0000670-DEF0000671, Defendant provides the drivers  
19 with the "Step-by-step Trip checklist" and the Macros and  
20 instructs them how and when to communicate through  
21 Omnitracs/Qualcomm with Defendant during a workday.
- 22 d. At DEF0000689, Defendant states, "Equipment must stay  
23 within site [*sic*] of the employee unless prior authorization is  
24 received from his/her Fleet Manager. This authorization must  
25 also include a secure (approved) location for the equipment."
- 26 e. At DEF0000699, Defendant states "Marten Transport makes  
27 use of standard mileage computations used throughout the  
28 transportation industry for purposes of invoicing its customers

1 and making payment of wages to its driving employees. **The**  
2 **Mileages Are Retrieved From Marten Transport's Rand**  
3 **McNally Household Goods Miles."**

4 71. True and correct copies of excerpts of several of Defendant's policies  
5 revised in October of 2012 which Defendant bates labeled DEF0000399,  
6 DEF0000472-DEF0000484, DEF0000527-DEF0000528, DEF0000543-  
7 DEF0000544, DEF0000555, DEF0000561, and produced in response to Plaintiff  
8 Donald Harrington's Request for Production of Documents and Tangible Things  
9 to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) are attached to this  
10 declaration as **Exhibit 68**. The following subparagraphs pertain to documents in  
11 Exhibit 68:

- 12 a. At DEF0000399, Defendant informs the drivers of the type of  
13 messages they should communicate with dispatch through  
14 Qualcomm.
- 15 b. At DEF0000527, Defendant states, "Equipment must stay  
16 within site [*sic*] of the employee unless prior authorization is  
17 received from his/her Fleet Manager."
- 18 c. At DEF0000543-DEF0000544, Defendant instructs the drivers  
19 to submit trip documents utilizing Qualcomm scanning. It also  
20 states that "Trip Documents include the Trip Report (Cover  
21 Sheet), all Bills of Lading, receipts, paper logs if not sending  
22 electronic, and any other relevant documents."

23 72. True and correct copies of excerpts from Defendant's Driver  
24 Employee Manual dated July 2015 which Defendant bates labeled DEF0002289  
25 and DEF0002366 and produced in response to Plaintiff Donald Harrington's  
26 Request for Production of Documents and Tangible Things to Defendant Marten  
27 Transport, Ltd., Set No. 1 (see Exhibit 2) are attached collectively as **Exhibit 69**.  
28 Defendant designates the document as confidential.

1           a.     At DEF0002289, Defendant states, “Equipment must stay  
2                 within site [*sic*] of the employee unless prior authorization is  
3                 received from his/her Fleet Manager. The authorization must  
4                 also include a secure (approved) location for the equipment.”

5           73.    A true and correct copy of the court’s class certification decision in  
6     *Bickley v. Schneider National Carriers, Inc.*, No. C-08-05806-JSW (N.D. Cal.  
7     Sep. 07, 2012) is attached to this declaration as **Exhibit 70**.

8           74.    A true and correct copy of the email message of Defendant’s Human  
9     Resources Sr. Generalist dated September 28, 2015, regarding Plaintiff Donald  
10    Harrington’s termination is attached to this declaration as **Exhibit 71** in redacted  
11    form. Per the agreement of the parties, this document has been redacted of all  
12    names and employee identification numbers to protect the privacy of the  
13    employee’s identifying and contact information. Defendant bates labeled and  
14    produced this document as DEF0000143 in response to Plaintiff Donald  
15    Harrington’s Request for Production of Documents and Tangible Things to  
16    Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2).

17          75.    A true and correct copy of the email message of Caroline Lowman of  
18    Class Action Claims Administration, Inc. dated September 28, 2015 is attached to  
19    this declaration as **Exhibit 72**.

20          76.    A true and correct copy of the complaint by Michael Dodson against  
21    Defendant filed on January 31, 2013 in the San Bernardino Superior Court, Case  
22    No. CIVRS1300801, is attached to this declaration as **Exhibit 73**. Mr. Dodson, a  
23    former California-based driver employee of Defendant, filed his complaint on  
24    January 31, 2013 for Defendant’s failure to pay minimum wages and for illegal  
25    deductions in violation of the California Labor Code.

26          77.    A true and correct copy of the first amended complaint by Erika  
27    Johnson against Defendant filed on September 10, 2012 in the San Bernardino  
28    Superior Court, Case No. CIVRS1008457, is attached to this declaration as

1 **Exhibit 74.** Ms. Johnson, a former California-based driver employee of  
2 Defendant, filed her first amended complaint on September 10, 2012 for  
3 Defendant's failure to pay minimum wages and for illegal deductions.

4 78. A true and correct copy of Plaintiffs' Second Amended Complaint  
5 dated August 23, 2017 (ECF Docket No. 94) is attached to this declaration as  
6 **Exhibit 75.**

7 79. A true and correct copy of Defendant's November 17, 2017 Answer  
8 to Second Amended Complaint (ECF Docket No. 102) is attached to this  
9 declaration as **Exhibit 76.** It pleads the following defenses (among others): (12)  
10 preemption by the Federal Aviation Administration Authorization Act  
11 ("FAAAA"), (14) no failure to provide meal and rest periods as required by  
12 California law, and (19) the reports Defendant received for applicants for  
13 employment were not consumer or investigative reports.

14 80. A true and correct copy of Defendant's Driver Position Description  
15 dated October 2012 and bates labeled by Defendant as DEF0000387 and produced  
16 in response to Plaintiff Donald Harrington's Request for Production of Documents  
17 and Tangible Things to Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit  
18 2) is attached to this declaration as **Exhibit 77.** It states that the purpose of the  
19 position is to "transport customer product to its destination in an on-time damage-  
20 free condition which achieves or exceeds the customers' expectations..." It  
21 requires drivers to abide by all Defendant's policies and procedures.

22 81. Plaintiffs can identify a number of significant common questions of  
23 fact and law:

24 A. Whether for the Driver Class "Mandatory breaks are based on  
25 hours worked **in California**" only (Ex. 1, DEF7687; *Ridgeway v. Wal-Mart*  
26 *Stores, Inc.*, No. 08-CV-05221-SI, 2016 WL 4529430, at \*17 (N.D. Cal. Aug. 30,  
27 2016));

28 B. Whether for the Driver Class hours worked before entering

1 California and after leaving California do not count toward hours worked (Ex. 1,  
2 DEF7687; *Ridgeway v. Wal-Mart Stores, Inc.*, No. 08-CV-05221-SI, 2016 WL  
3 4529430, at \*17 (N.D. Cal. Aug. 30, 2016));

4 C. Whether for the FCRA Class Defendant's background check  
5 disclosures violate the FCRA by including liability release provisions and other  
6 extraneous information (Exhibit 1, DEF7714-7727);

7 D. Whether for the FCRA Class federal motor carrier regulations  
8 required Defendant to issue pre-background check disclosures that included  
9 liability release provisions and other extraneous information (Exhibit 1, DEF7714-  
10 7727);

11 E. Whether for the FCRA Class and the 2-Year FCRA Class the  
12 statute of limitations on the claims at issue is five years or two years (*see* 15  
13 U.S.C. §1681p);

14 F. Whether for the Driver Meal Break Subclass Defendant's  
15 written policies failed to provide its drivers with meal and rest breaks as required  
16 by California law;

17 G. Whether for the Driver Class Defendant's failure to expressly  
18 authorize the drivers to take a ten minute rest period every four hours worked, or  
19 major fraction thereof, is a violation of the Wage Order (*see e.g., Alberts v.*  
20 *Aurora* (2015) 241 Cal.App.4th 388, 406; *Bradley v. Networkers International,*  
21 *LLC*, 211 Cal.App.4th 1129, 1150 (2012));

22 H. Whether for the Driver Meal Break Subclass Defendant's  
23 failure to expressly authorize the drivers to take 30 minute meal periods before  
24 they work more than five hours is a violation of the Wage Order (Cal.Lab.Code §§  
25 226.7, 512);

26 I. Whether for the class members of the Driver Class are entitled  
27 to premium wages because Defendant failed to authorize class members to take 10  
28 minute rest breaks (Cal.Lab.Code § 226.7);

1 J. Whether for the class members of the Driver Class are entitled  
2 to premium wages because Defendant failed to pay class members separately for  
3 the rest break time;

4 K. Whether for the Driver Meal Break Subclass Defendant paid  
5 meal period wages when on-duty meal periods are taken;

6 L. Whether for the Driver Meal Break Subclass Defendant could  
7 have entered into an on-duty meal period agreement with its drivers (*see* DS ¶ 11,  
8 Ex. 9; Wage Order 9, § 12(c));

9 M. Whether for the Driver Meal Break Subclass California law  
10 obligated Defendant to factor meal and rest periods into its delivery schedules;

11 N. Whether for the Driver Meal Break Subclass federal  
12 regulations requiring motor carriers to factor State speed limits into their deliver  
13 schedules law obligated Defendant to factor meal and rest periods into their  
14 delivery schedules (*see* 49 C.F.R. § 392.6);

15 O. Whether for the Driver Meal Break Subclass the FAAAA  
16 and/or federal regulations on hazardous materials preempt California meal and  
17 rest periods laws (*see* Ex. 77);

18 P. Whether for the Driver Meal Break Subclass drivers could  
19 waive meal and rest periods that Defendant did not notify them of (*see* DS ¶ 11,  
20 Ex. 9; *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1033, 273 P.3d  
21 513, 532 (2012); *Ortega v. J.B. Hunt Transp., Inc.*, 2012 WL 6708161, at \*3  
22 (C.D. Cal. Dec. 18, 2012) (Fitzgerald, J.); *Bradley v. Networkers International,*  
23 *LLC*, 211 Cal.App.4th 1129, 1151 (2012); *Safeway, Inc. v. Superior Court of Los*  
24 *Angeles Cty.*, 238 Cal. App. 4th 1138, 1160 (2015), review denied (Oct. 21,  
25 2015));

26 Q. Whether for the Driver Meal Break Subclass Defendant's  
27 prohibition on leaving sight of the vehicle violates California's meal and rest  
28 period laws (*Brinker*, 53 Cal.4th at 1035; Lab.Code §512(a); Wage Order,



1 §11(A); *Madera Police Officers Ass'n v. City of Madera*, 36 Cal.3d 403 (1984));

2 R. Whether for the Driver Meal Break Subclass Defendant has  
3 paid premium wages when meal and rest breaks have not been provided;

4 S. Whether for the Driver Class members employed after July of  
5 2014 the amount of unpaid premium wages can be determined by reviewing a  
6 sample of the driver logs and other electronic records that are available (*see*  
7 *Ridgeway v. Wal-Mart Stores, Inc.*, No. 08-CV-05221-SI, 2016 WL 4529430, at  
8 \*15-17 (N.D. Cal. 2016);

9 T. Whether for the Driver Class Cal. Labor Code § 226.2  
10 eliminates Defendant's contractual obligations accrued before it was enacted and  
11 as a result, violates the Contracts Clause of the United States Constitution, Article  
12 I, Section. 10 (*Lockheed Aircraft Corp. v. Superior Court*, 28 Cal.2d 481, 487  
13 (1946));

14 U. Whether for the FCRA Class Defendant's background check  
15 disclosures include "stand alone" disclosures that do not violate the FCRA  
16 (Exhibit 1, DEF7714-7727; 15 U.S.C. § 1681b(b)); and

17 V. Whether for the FCRA Class the employees who underwent  
18 Defendant's background checks suffered a concrete injury due to Defendant  
19 failure to issue "stand alone" disclosures that do not violate the FCRA (Exhibit 1,  
20 DEF7714-7727; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 194 L. Ed. 2d 635  
21 (2016), as revised (May 24, 2016)).

22 82. True and correct copies of Defendant's deposition subpoena to driver  
23 #4 dated November 21, 2016 and driver #4's objections to Defendant's deposition  
24 subpoena dated December 8, 2016 are collectively attached to this declaration as  
25 **Exhibit 78** in redacted form. Per the agreement of the parties, this document has  
26 been redacted of all names, addresses, account information, and employee  
27 identification numbers to protect the privacy of the employee's identifying and  
28 contact information.



1           83. A true and correct copy of driver settlement for one of Defendant's  
2 drivers (for the purposes of this declaration identified anonymously as driver # 4)  
3 for the period of August 6 through 12, 2014 that Plaintiffs' counsel bates labeled  
4 SP000299-SP000300 in response to Defendant's deposition subpoena to driver #4  
5 dated November 21, 2016 (see Exhibit 78) is attached to this declaration as  
6 **Exhibit 79** in redacted form. Per the agreement of the parties, this document has  
7 been redacted of all names, addresses, account information, and employee  
8 identification numbers to protect the privacy of the employee's identifying and  
9 contact information.

10           84. True and Correct copies of excerpts from Defendant's Employee  
11 Manual dated February 2012 which Defendant bates labeled DEF0001045,  
12 DEF0001077, DEF0001249, and produced in response to Plaintiff Donald  
13 Harrington's Request for Production of Documents and Tangible Things to  
14 Defendant Marten Transport, Ltd., Set No. 1 (see Exhibit 2) are attached  
15 collectively as **Exhibit 80**. The following subparagraphs pertain to documents in  
16 Exhibit 80:

- 17           a. At DEF0001077, Defendant states "Equipment must stay  
18 within employee's site [*sic*] unless prior authorization is  
19 received from Fleet Manager."  
20           b. At DEF0001249, Defendant states "Equipment must stay  
21 within site [*sic*] of the employee unless prior authorization is  
22 received from his/her Fleet Manager."

23           85. A true and correct copy of Defendant's Securement of Company  
24 Equipment policy dated March 2013 and bates labeled by Defendant as  
25 DEF0001831 and produced in response to Plaintiff Donald Harrington's Request  
26 for Production of Documents and Tangible Things to Defendant Marten  
27 Transport, Ltd., Set No. 1 (see Exhibit 2) is attached to this declaration as **Exhibit**  
28 **81**. It states as follows: "Equipment must stay within site [*sic*] of the employee

1 unless prior authorization is received from his/her Fleet Manager.”

2 86. True and Correct copies of excerpts from Defendant’s Employee  
3 Manual dated January 2011 which Defendant bates labeled DEF0002048-  
4 DEF0002049 and produced in response to Plaintiff Donald Harrington’s Request  
5 for Production of Documents and Tangible Things to Defendant Marten  
6 Transport, Ltd., Set No. 1 (see Exhibit 2) are attached collectively as **Exhibit 82**.  
7 The following subparagraphs pertain to documents in Exhibit 82:

8 a. At DEF0002048, Defendant states “(‘Applicant’) understands  
9 that failure to return Marten Transport, Ltd. equipment to a  
10 designated Marten Transport, Ltd. terminal will result in  
11 Marten Transport, Ltd. charging (“Applicant”) with  
12 abandonment of Company equipment. I also understand the  
13 charge of abandonment will be permanently recorded on my  
14 driving record, in addition to being reported to DAC Services.  
15 I further understand should I abandon the equipment, all  
16 personal belongings within will be discarded.”

17 b. At DEF0002049, Defendant states “if such unauthorized use of  
18 equipment occurs the employee will be responsible to  
19 reimburse Marten Transport \$2.00 per unauthorized mile, to  
20 cover associated costs.”

21 87. Attached collectively as **Exhibit 83** are true and correct copies of  
22 emails in redacted form of David Spivak and Angela Rafoth dated September 28,  
23 2016 through October 11, 2016 regarding Defendant’s truck position reporting  
24 (i.e. “ping”) records. Parts of these emails have been redacted to eliminate  
25 irrelevant discussions. In her email dated October 11, 2016, Ms. Rafoth stated  
26 “that position reporting (i.e. ‘ping’) data does exist, for all or most of the class  
27 period.” Such records, which go back to the beginning of the class period, will  
28 show the cities and states each driver performed his/her duties in a workday and

1 the amount of time spent in California. As such, these records will enable the  
2 Court to ascertain the drivers who were subject to California wage and hour  
3 protections.

4 88. A true and correct copy of the Declaration of V. Paul Herbert filed on  
5 October 13, 2016 in support of Plaintiff Donald Harrington's Motion for Class  
6 Certification (ECF Docket No. 62) is attached to this declaration as **Exhibit 84**.

7 89. A true and correct copy of the declaration of Donald Harrington,  
8 dated October 10, 2016 and filed on October 13, 2016 (ECF Docket No. 61), is  
9 attached to this declaration as **Exhibit 85**.

10 90. I have received varying estimates from Defendant's counsel as to the  
11 number of California-based day-rate drivers, some of which are numerous and  
12 some are not.

13 91. To the best of my knowledge, neither Plaintiffs nor I have any  
14 conflicts of interest with the absent class members in this case. I have already  
15 spent substantial hours interviewing the named Plaintiffs and other class members,  
16 researching the claims, conducting discovery, taking and defending depositions,  
17 and retaining an expert to analyze the management of the trial in this case. I intend  
18 to continue representing the putative class members diligently.

19 92. In 1991, I earned a Bachelor of the Arts degree with a major in  
20 Political Science from the University of California at Berkeley. In 1995, I earned a  
21 Juris Doctor degree from Southwestern University School of Law.

22 93. While in Law School, I externed for the Honorable Judith Chirlin  
23 (ret.) and the Honorable Bernard Kaufman (ret.), both Judges of the Los Angeles  
24 Superior Court, Central District. I also externed for the California Attorney  
25 General.

26 94. In December of 1995, Supreme Court for the State of California  
27 admitted me as an Attorney and Counselor at Law and licensed me to practice law  
28 in all the Courts of this State. On May 11, 2012, I also became admitted to the

1 District of Columbia Bar.

2 95. I began practicing law with the Law Offices of David L. Ross after I  
3 was admitted to the Bar. The Law Offices of David L. Ross later merged with  
4 other law firms to become Ross, Rose & Hammill, LLP. At these firms, my legal  
5 work focused primarily on representation of federal employees. I practiced before  
6 a variety of tribunals, including the Merit Systems Protection Board, the Equal  
7 Employment Opportunity Commission, California State courts, and several  
8 federal courts throughout the country. I represented many individuals with  
9 employment claims against the U.S. Government.

10 96. I chose to open my own practice in April of 2000. At that time, I  
11 formed Spivak & Harrison, LLP with David Harrison. Spivak & Harrison, LLP  
12 concentrated in the areas of employment law and investor rights. Until Spivak &  
13 Harrison, LLP began to dissolve in about August of 2007, my practice focused on  
14 public and private employee rights claims before arbitrators (including the ADR  
15 Services, Judicate West, National Association of Securities Dealers (now the  
16 Financial Industry Regulatory Authority), the State and federal courts, Merit  
17 Systems Protection Board, the California Labor & Workforce Development  
18 Agency, the California Division of Labor Standards Enforcement, the California  
19 Unemployment Insurance Appeals Board and the Equal Employment Opportunity  
20 Commission.

21 97. In August of 2007, I formed The Spivak Law Firm. With the Spivak  
22 Law Firm, my practice is focused on representation of private and public  
23 employees with claims of unpaid wages, wrongful termination, harassment, family  
24 and medical leave, whistleblowing, discrimination, benefits, and civil rights  
25 violations. One of my websites, *FightWrongfulTermination.com*, provides a  
26 further description of my practice. I am also of-counsel to the law firm of  
27 Aidikoff, Uhl & Bakhtiari and frequently advise them on matters involving  
28 employment law.

1           98. I am experienced in handling employment law matters and  
2 specifically wage and hour cases. I have been practicing law since 1995. My  
3 experience has been almost exclusively in the area of employment law  
4 representing employees with claims of wrongful termination, harassment,  
5 whistleblower retaliation, discrimination, wage and hour, and family and medical  
6 leave violations. I have tried many cases before California and federal courts,  
7 government agencies and neutral arbitrators. I am a member of the California  
8 Employment Lawyers Association (CELA).

9           99. Since I started practicing law, I have tried many cases before courts,  
10 arbitrators and government agencies. Some of my cases are:

11           a. *Ricardo Sandoval v. Dept. of Treasury*, United States District  
12 Court, Southern District of California (the Honorable Judith Keep presiding),  
13 1998. Plaintiffs Special Agent for the U. S. Customs Service alleged  
14 discrimination and retaliation in promotions and discipline. The jury awarded  
15 compensatory damages. Court subsequently awarded additional back pay and  
16 gave Plaintiffs a retroactive promotion. *See* "Lawsuit Puts Customs Service on  
17 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord,  
18 *San Diego Union-Tribune*, April 29, 1998; "Customs Agent Is Awarded \$200,000:  
19 Jury Says He Faced Bias And Retaliation" by Valerie Alvord, *San Diego Union-*  
20 *Tribune*, May 16, 1998.

21           b. *Jorge Guzman v. Department of Justice*, United States District  
22 Court, Central District of California (the Honorable Lourdes Baird presiding),  
23 1999. Plaintiffs Special Agent for the Immigration and Naturalization Service  
24 alleged racial discrimination, retaliation and police brutality by agents of the  
25 Office of the Inspector General. Jury found the Defendants liable. Case settled  
26 shortly before the damages phase. *See* "U.S. to Pay \$400,000 to INS Agent in Bias  
27 Suit; Courts: Complaint says he suffered 10 years of harassment on the job  
28 because he is Latino, including falsified charges" by Patrick J. McDonnell, *Los*

1 *Angeles Times*, January 21, 1999.

2 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court,  
3 Compton (the Honorable Michael Rutberg presiding), 2001. Plaintiff  
4 whistleblower brought civil rights claims and wrongful termination claims against  
5 employer in a month-long jury trial. The jury awarded compensatory and punitive  
6 damages. See "Activist Says Criticism of Rail Plan Cost His Job" by Dan Weikel,  
7 *Los Angeles Times*, September 28, 2000; "Punitive Damages Awarded to Fired  
8 Social Worker" by Dan Weikel, *Los Angeles Times*, June 10, 2000; "A  
9 Whistleblower's Revenge" by Susan Goldsmith, *New Times Los Angeles*, June 8,  
10 2000.

11 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*,  
12 Orange County Superior Court, Central Justice Center (the Honorable Kirk H.  
13 Nakamura presiding), 2004. Plaintiff, who I represented *pro bono* sought the  
14 return of \$45,000.00 he paid to an attorney escrow officer who subsequently  
15 absconded with the money. The jury awarded compensatory damages. The  
16 Judgment with interest is now far in excess of that amount. Soon after this case  
17 was litigated, the State Bar of California awarded me the Wiley W. Manuel  
18 Award for Pro Bono Legal Services.

19 e. *Rick Pierce v. Department of Treasury*, Merit Systems  
20 Protection Board (1999). Administrative Judge awarded compensatory damages to  
21 wrongfully terminated Customs Agent, followed by an award of Attorneys' fees  
22 and costs.

23 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West  
24 before the Honorable Robert Polis (ret.) (2008). In that case, I represented a victim  
25 of FMLA violations and wrongful termination against his former employer. The  
26 Neutral Arbitrator awarded compensatory and liquidated damages. The claims for  
27 damages, attorney's fees and costs were resolved shortly thereafter by means of a  
28 confidential settlement.



1 g. *Alina Ghrdilyan v. RJ Financial, Inc.*, et al., LA Superior  
2 Court case no. BC430633 (2012), the Honorable Ronald Sohigian presiding. To  
3 my knowledge, this case is the first and only case to be successfully prosecuted  
4 through trial under the Labor Code Private Attorney Generals Act of 2004, Labor  
5 Code §§ 2698, *et seq.* on behalf of plaintiffs and other aggrieved employees  
6 against someone other than an employer for civil penalties including unpaid  
7 wages. The case involves claims of unpaid overtime, unprovided rest and meal  
8 periods, unpaid vacation, untimely interval and final wages, and unreimbursed  
9 expenses. For my work in that case, the Court awarded me an hourly rate of  
10 \$600.00 hour based on my skill and experience.

11 100. In my representation of employees, I have prosecuted several  
12 lawsuits on behalf of employees with claims of rest and meal period and overtime  
13 violations or other wage claims. I have recently been involved in the prosecution  
14 of numerous wage and hour class actions at various stages of litigation. A small  
15 sampling of the wage and hour class action cases in which I have recently been  
16 counsel of records is as follows:

17 a. *Shaw v. Interthinx, Inc.*, United States District Court, District  
18 of Colorado, Case No. 13-CV-01229 (appointed Class Counsel and granted final  
19 approval of \$6,000,000 class action settlement by the Court on behalf of auditor  
20 and underwriter employees).

21 b. *Vang v. Burlington Coat Factory Corporation*, United States  
22 District Court Central District of California, Case No. 09-CV-08061-CAS-JCx  
23 (appointed Class Counsel and granted final approval of \$5,750,000 of class action  
24 settlement by this Court on behalf of assistant store manager employees).

25 c. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No.  
26 BC440058 (appointed Class Counsel and granted final approval by the Court of  
27 \$5,500,000 class action settlement on behalf of personal trainer employees).

28 d. *Nardone v. Sequoia Beverage Company, LP*, Tulare County

1 Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted  
2 final approval by the Court of \$2,200,000 class action settlement on behalf of  
3 hourly employees).

4 e. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles  
5 Sup.Ct., Case No. BC462917 (appointed Class Counsel and granted final approval  
6 by the Court of \$1,700,000 class action settlement on behalf of service account  
7 manager employees).

8 f. *Huynh v. Carefusion Resources, LLC, et al*, San Diego Sup.Ct.,  
9 Case No. 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted  
10 final approval by the Court of \$1,540,000 class action settlement on behalf of  
11 medical devices employees).

12 g. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles  
13 Sup.Ct., Case No. BC465017 (appointed Class Counsel and granted final approval  
14 by the Court of \$1,150,000 class action settlement on behalf of merchandiser  
15 employees).

16 h. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case  
17 No. BC431249 (granted class certification through contested motion, appointed  
18 Class Counsel and granted final approval of \$975,000 class action settlement by  
19 the Court in case on behalf of former pharmacy employees based on late final  
20 wage payments in violation of Labor Code §§ 201–203).

21 i. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County  
22 Superior Court, Case No. VCU-245496 (appointed Class Counsel and granted  
23 final approval by the Court of \$850,000 class action settlement on behalf of  
24 assistant fitness manager employees).

25 j. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080  
26 (appointed Class Counsel and granted final approval of \$650,000 class action  
27 settlement involving alleged misclassification of sales employees and unpaid  
28 vacation pay).

1 k. *DiCato v. Francesca's Collections, Inc.*, San Diego County  
2 Superior Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class  
3 Counsel and granted final approval by the Court of \$470,000 class action  
4 settlement on behalf of boutique manager and assistant manager employees).

5 l. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case  
6 No. BC442608 (appointed Class Counsel and granted final approval of \$400,000  
7 class action settlement on behalf of call concert rigging employees).

8 m. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior  
9 Court, Case No. BC421485 (granted class certification through contested motion,  
10 appointed Class Counsel and granted final approval of \$207,541.84 class action  
11 settlement by the Court in case on behalf of former security workers based on late  
12 final wage payments in violation of Labor Code §§ 201–203).

13 101. A true and correct copy of the amended declaration of Anthony  
14 Bryant, dated March 26, 2018, is attached to this declaration as **Exhibit 86**.

15 102. A true and correct copy of the amended declaration of Edwin Ayala,  
16 dated March 28, 2018, is attached to this declaration as **Exhibit 87**.

17 103. A true and correct copy of the declaration of Jeffery P. Smith, dated  
18 October 13, 2016, is attached to this declaration as **Exhibit 88**.

19 104. A true and correct copy of the declaration of Carol Garrett, dated  
20 October 11, 2016, is attached to this declaration as **Exhibit 89**.

21 105. A true and correct copy of the declaration of Sandra Delao, dated  
22 October 11, 2016, is attached to this declaration as **Exhibit 90**.

23 106. A true and correct copy of the declaration of James Barclay, dated  
24 October 12, 2016, is attached to this declaration as **Exhibit 91**.

25 107. A true and correct copy of the declaration of Glenn Beasley, dated  
26 October 11, 2016, is attached to this declaration as **Exhibit 92**.

27 108. A true and correct copy of the declaration of Dianna Morrison, dated  
28 October 11, 2016, is attached to this declaration as **Exhibit 93**.

